



April 11, 2008

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA E-MAIL TO: BehavioralMarketingPrinciples@ftc.gov

Re: Online Behavioral Advertising Proposed Principals

Dear Secretary Clark:

Regions Financial Corporation ("Regions")¹ appreciates the opportunity to comment to the Federal Trade Commission ("FTC") on the proposals set forth in "Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles"

Customer Relationships & Technology

Regions is committed to keeping our customers' trust and confidence. Respect for the privacy of our customers' personal financial information is an essential element of this trust and confidence. With this firm footing, Regions seeks to anticipate, understand, and meet our customers' financial needs.

Personal, face-to-face relationships between customers and Regions associates will always be the cornerstone of our shared success. The past thirty years have enriched customer relationships with ever-newer conveniences – from networks of ATMs and computerized telephone inquiry services in the 1980's – to the advent of the Internet banking in the 1990's.

With each new convenience for delivering quality products and services comes the desire to ensure that Region's approach is forthright and clearly understood by our customers. Similarly, each new convenience provides Regions with new opportunities to be steadfast in ensuring the confidentiality and security of our customers' private information.

¹ Regions Financial Corporation is a member of the S&P 100 Index and Forbes Magazine's 'Platinum 400' list of America's best big companies. With \$141 billion in assets, Regions is one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services. Regions serves customers in 16 states across the South, Midwest and Texas, and through its subsidiary, Regions Bank, operates almost 2,000 banking offices and 2,400 ATMs. Its investment and securities brokerage, trust and asset management division, Morgan Keegan & Company Inc., provides services from over 400 offices.

Customers & Non-Customers

The FTC's proposed principles do not make a distinction between behavioral advertising vis-à-vis customers visiting the web site of a company with whom they have a contractual or other ongoing relationship, as distinguished from behavioral advertising directed towards non-customers

In the final version of the proposed principles, it may be desirable to draw a distinction between the use of behavioral advertising to anticipate, understand, and meet customers' financial needs, and the arguably more intrusive use of similar means to solicit the business of non-customers

Permanent Preference & Session Preference

Banking customers have choices about how they are marketed to. These choices protect the privacy of the *individual consumer's verifiable private, nonpublic information*. The opportunities to "opt-out" of various types of marketing and information sharing information were created by the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA)². Respect for these choices underlies the one-on-one personal relationship between a bank and its customer.

In contrast, the marketing choices embodied in the FTC's proposed principles would be those of a *profile of an unknown consumer, based on that consumer's online activity, which may itself be an amalgam of several users of a single Internet connection*.

The difference between responsible management of a personal customer relationship on the one hand, and an unknown audience on the other is of great importance and calls for distinct treatment. For this reason it may be desirable to limit behavioral advertising marketing preference choices to a *session preference* (applying only to specific visits to a given web page or web site), while reserving the recognition of *permanent or long-term marketing preferences* for situations involving customer relationships, which are already accustomed to significant protections.

Opt-In & Opt-Out

The FTC's proposed principles favor requiring consumers to "opt-in" rather than allowing them to "opt-out" of behavioral advertising. In an opt-in scenario, those consumers who do not venture to determine whether they have a right to choose will by default be deprived of choice. The choice to opt-in will be made only by those who seek it – those who are both better informed about the availability of choices in Internet commerce and more technically savvy.

In the banking business, this may mean that the consumers who are already less informed about the availability of choices may suffer additionally by being made less aware of the range of financial products and services available to them.

² Section 504 of the Gramm-Leach-Bliley Financial Services Modernization Act (GLB or GLBA) and its implementing regulation (Regulation P at 12 C.F.R. 226) provides banking customers the ability to "opt-out" of sharing of non-public personal information with third parties not affiliated with the bank with which the customer has a relationship. Similarly, the Fair Credit Reporting Act (FCRA) provides consumers the ability to "opt-out" of the sharing of credit information with affiliates of the bank with whom the consumer has a relationship. Effective November 2008, final rules promulgated under the Fair and Accurate Credit Transactions Act (FACT Act) implementing changes to the FCRA will provide customers with the ability to "opt-out" of the sharing of transaction and experience information between the bank with which the customer has a relationship and its affiliates. The FACT Act also provides for enhanced disclosure of the means with which consumers can "opt-out" of prescreened lists for use in marketing credit and insurance products.

Congress and the Federal Trade Commission have consistently shown a preference for opt-outs rather than opt-ins.³ Further, in each instance where Congress and the Commission have favored an opt-in, the action was in response to public outcry to a perceived harm.

Yet in the instance of behavioral advertising, there been no public outcry for regulatory action to address harm. Indeed the text of the FTC Staff Statement acknowledges that there is no consensus as to whether behavioral advertising is "beneficial, benign, or harmful."

To utilize an opt-in to "protect" consumers from what disparate interest groups can only agree to categorize as a technological innovation is perhaps premature and improvident. Particularly so given the availability of a proven alternative: the less liberty-impinging "opt-out."

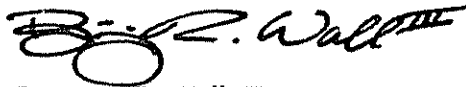
Privacy Promises & Future Innovations

The balance between respect for privacy and the advances of technology is nothing new.⁴ Many of the most exciting and advantageous aspects of online commerce were unheard of even 15 years ago. And just as the march of technological progress must not be allowed to trample the privacy of individuals, neither should consumers be shoehorned into a program that prevents them from realizing the benefits of future innovations. Unfortunately, the opt-in regime of the proposed principles threatens to do just this.

As written, the proposed principles would require consumers to repeatedly opt-in when innovations are made that would materially change the uses permitted by their previous opt-in. As consumers are unlikely to opt-in en masse whenever technological innovations are made, the result may be confusion. Companies may be obligated to maintain extensive, conflicting, and confusing privacy policies tailored to the various tiers of consumers with differing privacy preferences. This scenario can be avoided by favoring the opt-out, which allows consumers the freedom to choose not to continue to participate in behavioral advertising if and when it becomes too intrusive for their personal taste.

Again, Regions thanks you for this opportunity to offer comment on the proposed principles.

Sincerely,



Benjamin R. Wall, III
Privacy & Lending Compliance Officer
Vice President
Regions Financial Corporation
Birmingham, Alabama 35203

³ In addition to the three privacy-related enactments detailed in footnote 2 (the GLBA, the FCRA, and the FACT Act) an "opt-out" mechanism can be found in the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Similarly an "opt-out" appears in the Junk Fax Prevention Act (JFPA) of 2005 (Pub. L. No. 109-21, 119 Stat. 359 (2005)). Lastly, an "opt-out" mechanism can be found in the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 (CAN-SPAM) (15 U.S.C. 7701 et seq.).

⁴ "Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right 'to be let alone'—numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops.'" *The Right to Privacy*, Warren and Brandeis, Harvard Law Review, Vol. IV December 15, 1890 No. 5.